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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,655	06/28/2001	Eun K. Kim	2589.600	2027
5514	7590	02/25/2004	EXAMINER	
FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			SAEED, KAMAL A	
			ART UNIT	PAPER NUMBER
			1626	

DATE MAILED: 02/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/892,655	KIM ET AL.
Examiner	Art Unit	
Kamal A Saeed	1626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 23 October 2003.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
4a) Of the above claim(s) 2-10 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) _____ is/are rejected.

7) Claim(s) 1 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 28 June 2001 is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 09/25/01.
4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: ____.

DETAILED ACTION

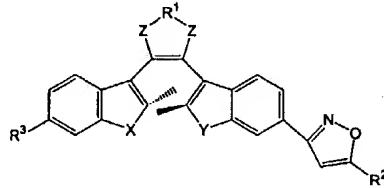
Claims 1-10 are currently pending in this application. Claims 2-10 are withdrawn from further consideration by the Examiner, 37 C.F.R. § 1.142(b), as being drawn to a non-elected invention. The withdrawn subject matter is patentably distinct from the elected subject matter as it differs in structure and element and would require separate search considerations. In addition, a reference, which anticipates one group, would not render obvious the other.

Information Disclosure Statement

Applicant's Information Disclosure Statements, filed on September 26, 2001 have been considered. Please refer to Applicant's copies of the 1449 submitted herewith.

Response to Restriction

Applicants' election with traverse of Group I, claim 1 (in part), drawn to diarylethene compounds represented by



, and the species wherein: R₁ is a

direct bond; X and Y represent S, in response filed on October 23, 2003 is acknowledged.

Because Applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Therefore, the restriction requirement is deemed proper.

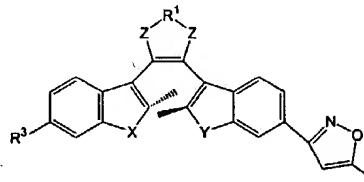
Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the

application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Status of the Claims

Claims 1-10 are pending in this application. Claim 2-10, as previously stated, are withdrawn from further consideration by the Examiner, 37 C.F.R. § 1.142(b), as being drawn to a non-elected invention. The withdrawn subject matter is patentably distinct from the elected subject matter as it differs in structure and element and would require separate search considerations. In addition, a reference, which anticipates one group, would not render obvious the other.

The scope of the invention of the elected subject matter is as follows:



Compounds of formula I

X and Y represent S; Z is as defined; R^1 is a direct bond; R^2 - R^5 are as defined; and n , m , and l are as defined.

As a result of the election and the corresponding scope of the invention identified supra, the remaining subject matter of claims 1 and claims 2-10 are withdrawn from further consideration pursuant to 37 CFR 1.142 (b) as being drawn to non-elected inventions. The withdrawn compounds contain varying functional groups such as indole, benzofuran, benzothiophene etc, which are chemically recognized to differ in structure and function. This recognized chemical diversity of the functional groups can be seen by the various classification of these functional groups in the U.S. classification system, i.e. class 548 subclass 400(+)

(indole), class 549 subclass 200(+) (benzofuran), etc. Therefore the subject matter which are withdrawn from consideration as being non-elected subject differ materially in structure and composition and have been restricted properly a reference which anticipated but the elected subject matter would not even render obvious the withdrawn subject matter and the fields of search are not co-extensive.

Objections

Claim 1, is objected to for containing elected and non-elected subject matter. Claim 1, drawn solely to the elected invention as identified *supra*, would appear allowable.

The closest prior art of record is to Michinori et al, *Chem. Commun.*, 1996. Michinori et al teach diarylethene compounds that differ from the instantly claimed compounds in that they do not have a 1, 2-oxazole group attached directly to the benzothiophene group.

Telephone Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kamal Saeed whose telephone number is (571) 272-0705. The examiner can normally be reached on Monday-Friday from 7:00 AM – 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Joseph K. McKane, can be reached at (571) 272-0699.

Communication via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by applicant and should be addressed to [joseph.mckane@uspto.gov]. All Internet e-mail communications will be made of record in the application file. PTO employees will not communicate with applicant via Internet e-mail where sensitive data will be exchanged or where there exists a possibility that sensitive

data could be identified unless there is of record an express waiver of the confidentiality requirements under 35 U.S.C. 122 by the applicant. See the Interim Internet Usage Policy published by the Patent and Trademark Office Official Gazette on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist, whose telephone number is (703) 308-2286.

Kamal Saeed
Kamal Saeed, Ph.D
Patent Examiner AU 1626
02/21/04